

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3355 of 1983

WITH

SPECIAL CIVIL APPLICATION No 3356 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALRAM CHELLARAM MAIDASANI

Versus

CHIEF GENERAL MANAGER STATE BANK OF INDIA

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Appearance:

(In both SCAs:)

MS KALPANA J BRAHMBHATT for Petitioner

MR PRANAV G DESAI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/06/97

ORAL JUDGMENT

#. The petitioner, an officer of the respondent-Bank filed these two Special Civil Applications in this Court in the matter of enhancement of the subsistence allowance to be given to him during the pendency of enquiry, quashing the chargesheet and order ultimately of the respondent-Bank dismissing him from services which has been affirmed by the appellate authority in appeal filed by him. The first petition relates to the prayer of the petitioner for quashing the chargesheet Ex.B and for enhancement of subsistence allowance after completion of one year from the date of suspension. The second Special Civil Application pertains to challenge made by the petitioner to the order of respondent-Bank dated 30th June 1986 of the disciplinary authority dismissing him from Bank's services and 3rd April 1987 of the appellate authority confirming the said orders.

#. The learned counsel for the petitioner, Ms.Kalpana J. Brahmbhatt, challenging the order of dismissal of the petitioner from services and that of the appellate authority confirming the said order, raised contentions that (i) the respondent-Bank has not supplied to the petitioner all the relevant documents as well as the list of witnesses, (ii) the enquiry report was not furnished to the petitioner before passing of the final order of dismissal, (iii) some of the material witnesses were examined in absence of the defence representatives of the petitioner, (iv) the order of the appellate authority is not a reasoned order, (v) the enquiry officer did not knew Gujarat whereas the witnesses who have been examined were knowing Gujarati, and (vi) the penalty of dismissal is highly excessive and disproportionate to guilt proved. In connection with the first petition, the learned counsel for the petitioner, in view of subsequent developments which have taken place, i.e. the penalty order has been passed, has not raised any contentions challenging the validity of the chargesheet and she confined her contention only to the point of enhancement of subsistence allowance of the petitioner after one year of suspension. Ms.Brahmbhatt contended that after one year period of suspension, the bank should have enhanced subsistence allowance of the petitioner which is not done and as such it has acted highly arbitrarily and unreasonable. In support of her contentions, the learned counsel for the petitioner cited one decision of the Hon'ble Supreme Court, in the case of Committee of Management, Kisan Degree College v. Shambhu Saran Pandey & Ors., reported in 1995(1) SLR 31.

#. On the other hand, the learned counsel for the respondent-Bank contended that the petitioner has been

given all the reasonable opportunity of defence. All the material documents which were the part of the proceedings of the enquiry were given to the petitioner or the inspection thereof has been permitted. The petitioner has made a vague averment of non supply of material documents. It has next been contended that though some of the witnesses were examined in the absence of the defence representative of the petitioner but the petitioner himself was responsible for this as his defence representative, without any reasonable cause or excuse, have not turned up. So far as the contention of learned counsel for the petitioner regarding non supply of enquiry report before passing of the order of penalty is concerned, the learned counsel for the respondent-Bank contended that this contention is no more sustainable in view of the decision of the Apex Court in the case of Managing Director, ECIL v. B.Karunakar, reported in JT 1993(6) SC 1. Replying to the contention of the learned counsel for the petitioner that enquiry officer was not knowing Gujarati, Mr.Pranav G. Desai, learned counsel for the respondent-Bank contended that this is nothing but only an afterthought plea which has been taken by the petitioner. No objection has been raised during the course of enquiry and when ultimately decision has come against him, this plea has been taken. Replying to another contention, the learned counsel for the respondent-Bank contended that it is an order of affirmance of the order of disciplinary authority by the appellate authority and as such the order of the nature as sought to be passed by the petitioner was not needed. Lastly, the learned counsel for the respondent-Bank contended that the petitioner himself is responsible for delay in enquiry and as such, his claim for enhancement of subsistence allowance does not stand to any merit.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. First of all, I consider it appropriate to deal with the contention raised by learned counsel for the petitioner regarding non supply of enquiry report by disciplinary authority. The penalty of dismissal in this case has been given to the petitioner by disciplinary authority on proved misconduct vide order dated 30th June 1986. This contention appears to have been raised by the learned counsel for the petitioner on the basis of decision of the Apex Court in the case of Mohd. Ramzan, but that decision has been explained by the Apex Court itself in the later decision in the case of Managing Director ECIL v. B.Karunakar (supra). So in view of the later decision of the Apex Court aforesaid, this

contention of the learned counsel for the petitioner is devoid of any substance. Reference may also have to another judgment of Apex Court in the case of state Bank of India, Bhopal v. S.S.Koshal, reported in 1994 (Suppli.2) SCC 468. Similar contention made in that case by the respondent therein has been negatived by the Apex Court and para No.5 of the Judgment, the Apex Court thus observed:

"The first contention stands negatived by the Constitution bench decision in managing Director ECIL v. B.Karunakar in as much as the order of punishment is prior to 20.11.1990".

In this case also the order of dismissal of the petitioner from Bank's services was made much earlier to 20.11.90.

#. At this stage, I consider it to be appropriate to deal with another submission of the learned counsel for the petitioner that the enquiry officer was not knowing Gujarati. Even if it is taken to be so, the learned counsel for the petitioner has failed to state how it has caused any prejudice to the petitioner. Moreover, the petitioner, despite of knowing this fact, has participated in the enquiry and enquiry officer was permitted to complete the enquiry. If it would have been really a serious objection which would have caused any prejudice to the petitioner's defence, then the same would have been taken seriously and then and there the petitioner would not have allowed the enquiry officer to complete the enquiry. The very fact that the petitioner has not raised this objection seriously before the enquiry officer nor he objected the continuation of enquiry on this ground, suggests that the petitioner, in fact had not felt aggrieved of this alleged shortcoming in the enquiry officer. It is now well settled that merely on some error or irregularity or illegality in the departmental proceedings, the same will not vitiate the same unless the delinquent officer, the petitioner herein, makes out a case of causing serious prejudice to his defence to the satisfaction of the Court. In this case, as observed earlier, the learned counsel for the petitioner is unable to satisfy this Court how because of this lacking of the enquiry officer, any prejudice has been caused to the petitioner in his defence. This contention of the learned counsel for the petitioner is equally of no substance.

#. Another contention made by learned counsel for the petitioner that the order of the appellate authority is

not a reasoned order is also devoid of any substance. Rule 51 of the State Bank of India (Supervising Staff) Service Rules, (hereinafter referred to as "Rules" for short), provides that the appellate authority shall consider while dealing with the appeal of the delinquent officer whether the findings are justified and/or whether the penalty is excessive or inadequate. The appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case. A plain reading of the aforesaid provisions nowhere contemplates that the appellate authority has to pass a reasoned order where it confirms the order of disciplinary authority. What appellate authority has to consider is whether the findings are justified and/or whether the penalty is excessive or inadequate. After considering that, it may pass an order of affirmance, enhancement, reduction or setting aside the penalty or remit the case to the authority which imposed the penalty or to any other authority with such directions as it deem fit in the circumstances of the case. The appellate authority is not required to pass an order like a judicial Court. From the order of the appellate authority, it should be reflected that it has considered whether the findings of the enquiry officer are justified and/or whether the penalty is excessive or inadequate. For that satisfaction I fail to see any justification in the contention of the learned counsel for the petitioner that there must be elaborate decision like judicial courts. On the record of the enquiry proceedings, a detailed and considered enquiry report is there where after the assessment of evidence of the parties, finding has been recorded on the charge. The another important document is the order of the disciplinary authority. The appellate authority is only required to look into this material and then to record to its satisfaction that the order does not call for any interference. In the case of State Bank of India v. S.S.Koshal (supra), identical contention has been made and the High Court has accepted that contention but the Hon'ble Supreme Court has not accepted the same. It is true that the Hon'ble Supreme Court has proceeded with the assumption as if what the High Court stated to be correct but after scrutinising the order of the appellate authority it has been held to be a speaking order. In that case, the order passed by the appellate authority has been reproduced in para-2 of the judgment. The order which has been passed in the present case by the appellate authority is on the record of this Special Civil Application as annexure 'D' and

after going through that order, it cannot be said that the requirement of Rule 51 of the said Rules has not been fulfilled by the appellate authority. This order, otherwise also cannot be said to be a non speaking order, particularly with reference to the requirement of Rule 51 aforesaid. This contention of the learned counsel for the petitioner is therefore of no substance.

#. Contention regarding non supply of relevant documents as well as list of witnesses to the petitioner.

The learned counsel for the petitioner, in support of this contention relied upon decision of Hon'ble Supreme Court in the case of Committee of Management, Kisan Degree College v. Shambhu Saran Pandey & Ors. (supra). In that case, the Hon'ble Supreme Court has observed that copies of documents relied on in support of the charges must be supplied to the delinquent officer. If the documents are voluminous and copies cannot be supplied, then the delinquent officer may be given an opportunity to inspect the documents. Failure to supply copies or inspection of documents would violate principles of natural justice. So far as the law as laid down by their Lordships of the Hon'ble Supreme Court in the aforesaid case is concerned, there cannot be any doubt. The documents on which reliance has been placed to prove charges against the petitioner are to be given to him or the inspection thereof has to be allowed. From the letter dated 10th March 1983 of the Bank, it comes out that the petitioner has been permitted to visit the Branch concerned to pursue the records/documents/files which were necessary to prepare his reply to the chargesheet. The petitioner has further been permitted to pursue the records and also permitted to take the notes. Reference may have to be made to the letter of the Bank dated 10th March 1983. Under this letter, extension has also been granted to the petitioner to file reply and he was given opportunity to visit the concerned Branch for perusal of records/documents/files. In affidavit-in-rejoinder, in para-7 thereof, the petitioner has admitted that he was permitted to peruse the records and to make notes. So there is no dispute in the case that all the documents which are relied upon by the respondent-Bank in the enquiry against him were made available to him for inspection and taking notes. The grievance of the petitioner is that he should have been furnished copies of the documents. In the aforesaid case before Their Lordships of the Hon'ble Supreme Court neither the copies were given nor inspection was allowed but here in the present case, inspection was allowed and the petitioner has also been permitted to take notes of

all the relevant documents. The demand of the petitioner in these facts for copies of document is nothing but only an act on his part to delay the proceedings. It is not the case where it can be said that the principles of natural justice have been violated. The insistence of the petitioner for supply of copies of also not supported by any rule from the relevant Rules. The only grievance in the writ petition is that the copies of documents were never furnished to him and the same has resulted in causing prejudice in making his defence. The petitioner has failed to show how any prejudice has been caused for non supply of copies of documents when he has been given opportunity of inspection of the documents as well as of taking notes thereof. Moreover, that grievance of the petitioner is at the stage of reply to the chargesheet and not during the enquiry itself. So far as to the grievance of the non-supply of the list of witnesses to the petitioner, the learned counsel for the petitioner has failed to make out any case. Taking into consideration the aforesaid facts this contention of the learned counsel for the petitioner is devoid of any substance and the same cannot be accepted.

#. Contention regarding examination of material witnesses in absence of defence representative.

The learned counsel for the respondents produced on record of the Special Civil Applications the proceedings of departmental enquiry. On 26th may 1984, the petitioner was not present but his defence representative Shri A.M.Suthar was present. At 11.00 am the petitioner gave a phone call to the enquiry officer stating that he will not be in a position to attend the enquiry as he is suffering from Diarrhoea. The defence representative of the petitioner though present, has taken the stand that in case if any proceedings are taken in the absence of the chargesheeted officer, the same will be taken to be only exparte and that though he is present, no cognizance of his presence be taken in absence of the chargesheeted officer. He further stated that any proceedings taken in absence of the chargesheeted officer are not binding to the chargesheeted officer. Not only this, he made a statement that he do not hold any power of attorney to represent the chargesheeted officer in his absence and therefore stated that he was not agreeable for continuing the proceedings in the absence of the chargesheeted officer. So, though the defence representative of the petitioner was present and witness were also present, but as the defence representative has taken the aforesaid stand, the matter has been adjourned to 7th June 1984. This long date has been given on the request of defence

representative that he had some other urgent work and he is not free as he is attending in some other domestic enquiry and some urgent work in respect of the two departments. On 7th June 1984, the defence representative has shown his difficulty in attending the enquiry and requested for taking up the proceedings on 8th June 1984. The proceedings were taken up on 8th June 1984 but on that date the defence representative was not present though the chargesheeted officer was present. The chargesheeted officer has objected for recording the statement of the witnesses of the Bank on the ground that his defence representative is not present. The chargesheeted officer was desirous of postponement of the proceedings of the enquiry till his defence representative is available and stated that he is supposed to come on 15th June 1984. However, the request of the chargesheeted officer was accepted and the proceedings were adjourned to 11th June 1984. On 11th June 1984, the petitioner was present but his defence representative was not present. From the proceedings of the said date, it is clear that the defence representative of the petitioner was available and more so he was on leave also. From the reply which has been given by chargesheeted officer to a question put by enquiry officer, it is clearly borne out that on 11th June 1984, the petitioner, i.e. chargesheeted officer had met his defence representative. The petitioner informed him that enquiry is fixed on that day, but the defence representative refused to turn up on the ground that he has no time and he is already on leave and he has given mandate to the petitioner to ask for adjournment. Further he has given out that he will be available only after 20th of this month, i.e. after 20th June, 1984. From the second question which has been put by enquiry officer to the chargesheeted officer, it is clear that the defence representative of the petitioner was on leave upto June 14th but now he has stated that he is not available upto 20th June. He was stated to be as per his own case, busy with another enquiry on 18th and 19th. The enquiry officer wanted to proceed with the enquiry proceedings but the chargesheeted officer has made protest against the same and he stated that if examination of witnesses are made, then he has nothing to do except to leave the proceedings. He stated that without his defence representative, it is not possible for him to participate in the proceedings and at 12.45 he has walked out of the proceedings. Thereafter the presiding officer started to examine the witness MW 1. After completion of the statement of MW 1, he started to examine the next witness and his statement has been completed. Next proceedings were adjourned to 12th June,



i.e. the next day and as usual the petitioner submitted an application of protest. On this date the statement of MW 3 was recorded and the petitioner has, raising all objections, ultimately cross-examined the witness and the proceedings were adjourned to 13th June. On 13th June, again the defence representative was not present. Incomplete statement of MW 3 was completed and the matter stood adjourned to 14th June. From the cross-examination which has been made by petitioner of the witness MW 3, I am satisfied that it cannot be said that he was not well conversant with the matter or he was not having complete record or he has felt any deficiency or incompetence in cross-examining the witnesses in absence of his defence representative. The petitioner has put numerous questions to the said witness which shows that he was also fully prepared with the case.

##. In view of these facts, I am satisfied that the conduct of the petitioner to walk out from the proceedings while the statements of MW 1 and MW 2 were recorded and not to cross-examine them was a calculated and deliberate act, otherwise he could have cross-examined these witnesses in case he was really desirous to do so. The absence of defence representative was only a pretext and secondly he has walked out possibly to make a ground of defect in the enquiry or at the later stage to make a ground for calling of the witnesses and in case those witnesses are not called for cross-examination, he intended to make out a capital out of it. On 14th June the petitioner was present but his defence representative was not present and he has stated that he (delinquent officer) is not feeling well and he was suffering from Dysentery and stomach pain. I fail to see any justification in entering in such long dialogues by the enquiry officer in such matters. The proceedings appears to have been deferred upto 2.00 pm on that day and again at 2.00 pm when the proceedings were taken up, the petitioner has repeated same ground of his illness. The matter was adjourned to 15th June on which date the chargesheeted officer was not present. However, the defence representative was present and curiously enough the defence representative has taken the plea that in absence of chargesheet officer, enquiry should not be proceeded. That shows the conduct of both the defence representative as well as the chargesheeted officer. They wanted to prolong the enquiry under one pretext or another. The overall conduct of the petitioner and his defence representative should be taken and if we go by that, I am satisfied that they have not acted fairly and they have objected furtherance of proceedings without any cogent and just ground at all stages. On 16th June 1984,

again the petitioner was not present. However, his defence representative was present and from the proceedings it comes out that on contacting the enquiry officer by the petitioner, he has given out that he is not feeling well and therefore the proceedings were taken up on 25th June 1984 and on this date, the petitioner as well as his defence representative were present and the defence representative, on that date, has entered into long dialogue with the enquiry officer, which in my view, are most irrelevant. The manner in which the defence representative has acted goes to show that he tried to put all blame upon enquiry officer. So the ground that statements of witnesses have been recorded in absence of defence representative is wholly untenable. The defence representative, even if it is taken to be on leave, was not out of station as per petitioner's own say. Contrary to it, I find from the proceedings that he was available, but still he has not attended the enquiry. When the defence representative has taken leave, he could have used that time for the purpose of representing the petitioner instead of absenting himself from the proceedings merely stating a ground that he has no time and that he is busy elsewhere, which contention is hardly of any substance. On record of this petition, it is not given out what were the compelling reasons and grounds with defence representative not to attend the proceedings on 11th, 12th, 13th, 14th etc. of the month of June 1984. It is a case where the petitioner has himself not availed of the opportunity given to him for examination of witnesses for which the fault lies with himself. As observed earlier, the petitioner was sufficiently in a position to cross-examine the witnesses also in case he really honestly intended to complete the enquiry and he had very effectively cross-examined MW No.3 also. So the act of petitioner of walking out from the proceedings on one of the aforesaid dates, and not cross-examining the two witnesses is a deliberate attempt on his part and for which the proceedings cannot be said to be vitiated. It cannot be said that the petitioner has not been given sufficient opportunity to cross-examine the witnesses but he himself has not availed of that opportunity. The net result of the aforesaid discussion is that the contention raised that material witnesses have been examined in absence of defence representative of petitioner is devoid of any substance.

Re.: Special Civil Application No.3355 of 1983:

##. In this Special Civil Application, the petitioner has made three fold prayers, namely, to quash the chargesheet, to restrain the respondents from conducting

the departmental enquiry, and lastly for enhancement of subsistence allowance after completion of one year from suspension.

##. Though in this Special Civil Application, the petitioner has not very specifically given out all the facts in respect to the third prayer made, the pleadings in this respect have been made in ground (E) of the Special Civil Application, which reads as under:

That the denial of the respondents for enhancing subsistence allowance after completion of one year period for suspension on the ground that delay was caused by the petitioner for completing the departmental enquiry is totally wrong, baseless and not justified.

So far as first two prayers are concerned, they do not survive now as the enquiry has not only been completed but the petitioner has also been given penalty. So far as the third prayer is concerned, both the parties have supplemented pleadings thereafter and sufficiently good pleadings have been brought on record by both the sides. However, the claim of the petitioner for enhancement of subsistence allowance was rejected by the disciplinary authority under its letter dated 28th April 1983. Reason for not enhancing subsistence allowance has been given that the petitioner himself was responsible for delaying the proceedings in the enquiry. This letter has been passed by the disciplinary authority, i.e. Chief General Manager and against this order, the petitioner has remedy of approaching the higher authorities, i.e. the appellate authority in disciplinary matters. In disciplinary matter, the petitioner had filed appeal before the Local Board and in this matter, i.e. the matter of enhancement of subsistence allowance also, the petitioner has right to make appeal-cum-representation before the same higher authority, i.e. the Local Board so that the matter may be considered by that authority.

##. In the result, Special Civil Application No.3355 of 1983 is disposed of with direction that the petitioner, if he so desires, may make a representation-cum-appeal in respect of his claim for enhancement of subsistence allowance before the appellate authority before which he had preferred appeal against the order of his dismissal and in case such representation-cum-appeal is made, the appellate authority shall consider the same in accordance with law, within three months from the date of receipt of the same. In case the claim of the petitioner for enhancement is allowed, the arrears of the same may be

paid to the petitioner within two months thereafter.  
Where the claim of the petitioner is not allowed, a  
reasoned order may be passed and a copy of the same may  
be sent to the petitioner. The Special Civil Application  
No.3355 of 1983 and Rule therein stand disposed of in  
aforesaid terms. No order as to costs.

##. The Special Civil Application No.3356 of 1983 is  
dismissed. Rule discharged. No order as to costs.

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(sunil)